

REMARKS

Claims 1, 3-23, and 40-41 are now pending in the application. In accordance with the discussions and agreement reached during the telephonic interview with the Examiner on October 18, 2007, Applicants have amended Claims 1, 11, 16, 22, 23, 40 and 41 and have cancelled Claims 2 and 24-39. No new matter has been added by the amendments to the claims. The Examiner is respectfully requested to enter these amendments and to reconsider and withdraw the rejections in view of the remarks contained herein.

INTERVIEW SUMMARY

Applicants' representative appreciated the opportunity to conduct a telephonic interview with the Examiner on October 18, 2007. Applicants' representative thanks the Examiner for the courtesies extended during the teleconference. As discussed above, agreement was reached that the Examiner would consider and enter the present claim amendments after-final, and that such amendments should place the claims in condition for allowance.

REJECTION UNDER DOUBLE PATENTING

Claims 1-10, 20 and 21 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending and commonly assigned Application No. 10/480,019, which has subsequently issued as U.S. Patent No. 7,288,549. As discussed above, Claim 2 has been cancelled. A Terminal Disclaimer in compliance with 37 CFR 1.321(c) is attached

and Applicants respectfully submit that the Terminal Disclaimer brings Claims 1, 3-10, 20 and 21 into patentable condition. However, this Terminal Disclaimer should not be construed as an admission that the present claims are obvious in view of U.S. Patent No. 7,288,549 (Serial No. 10/480,019). Accordingly, in light of the Terminal Disclaimer, Applicants respectfully request that the rejections be withdrawn.

ELECTION/RESTRICTIONS

The Examiner indicates the presence of non-elected subject matter in Claims 1-9, 11-23, 40 and 41 and pursuant to Applicants' March 26, 2006 election with traverse, requires cancellation of nonelected claims or other action (37 CFR § 1.144). In addition the Examiner indicates cancellation or other action under 37 CFR § 1.144 must be made with regard to Claims 24-39, drawn to an invention nonelected with traverse in Applicants' March 26, 2006 reply. Applicants have amended Claims 1, 11, 16, 22, 23, 40 and 41 to remove reference to non-elected subject matter, and additionally, have cancelled Claims 2 and 24-39. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

The Examiner reasserts the previous rejections of Claims 22, 23, 40 and 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants traverse these rejections.

Applicants maintain that one of skill in the art appreciates that a “ β -lactamase inhibiting agent” is a compound that exhibits β -lactamase inhibiting activity. Similarly, a “ β -lactam medicament agent” is one that prevents bacterial growth via β -lactam-type compounds, which are well-known antibiotics. When bacteria generate β -lactamase, they become resistant to the β -lactam-type antibiotics. The β -lactamase inhibiting activity prevents the bacteria from producing substances (*e.g.*, β -lactamase) that would otherwise provide resistance to such antibiotics. In other words, β -lactamase inhibiting compounds inhibit the natural defenses of bacteria. See for example, Applicants’ specification at Page 23, lines 18-30, for example, which describes various aspects associated with the β -lactamase inhibiting activity. These claim terms are not indefinite, because one having skill in the art can appreciate the meaning of these terms, particularly in view of the specification.

In order to further facilitate prosecution and, in accordance with the discussions and agreement reached with the Examiner during the telephonic interview on October 18, 2007, Applicants have cancelled Claim 2 and amended Claims 22, 23, 40, and 41 to recite specific beta-lactam medicaments, thereby, further limiting the subject matter of the claims from which they depend. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

ALLOWABLE SUBJECT MATTER

The Examiner states that Claims 11-17 would be allowable if rewritten in independent form. Applicants thank the Examiner for the indication of allowable subject

matter. Applicants respectfully submit that all of Claims 1, 3-23 and 40-41 are in condition for allowance.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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